



"Sensible Approaches to Financial Security..."

December 21, 2010

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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

**Re: Docket No R-1390
The Federal Reserve Board (FRB) Proposals to Revise Regulation Z**

Dear Ms. Johnson:

OwnerGUARD is as an administrator of Guaranteed Asset Protection Agreements (GAP) for various financial institutions. OwnerGUARD supports the goal of offering accurate, meaningful disclosures for consumers who are considering the purchase of GAP. However, we are concerned about the proposed regulations, which would require that the disclosures for GAP are the same as that for other types of Debt Cancellation Contracts. GAP is fundamentally distinct from other forms of debt cancellation contracts, and we are concerned that the one-size-fits-all approach suggested in the FRB's proposed disclosures will confuse and potentially mislead consumers regarding the GAP product. If standardized disclosures are to be required for GAP, we strongly believe it should be tailored to the product. To that end, we offer the following comments.

GAP is Distinct from Other Debt Cancellation Products

GAP differs from other types of debt cancellation contracts. GAP is sold only in conjunction with the financing of a motor vehicle. (In fact, GAP is sometimes referred to as "Guaranteed *Auto* Protection.") Most consumers are required to have insurance to cover the vehicle in the event of a total loss. However, vehicle insurance only pays the actual cash value of the vehicle at the time of the total loss, not what the consumer owes on the loan. GAP waives the consumer's obligation to pay the difference between what is owed on the loan and what the vehicle insurer pays in the event of a total loss. The only reason that GAP exists is because insurance covering the vehicle does not pay off the loan in the event of a total loss. No other contingencies exist. Unlike other types of debt cancellation contracts, "other insurance" typically does not exist to cover this difference. Thus, GAP is unique for a variety of reasons.

Problems with the Proposed Disclosures

Keeping the key distinction between GAP and other types of debt cancellation contracts in mind, the disclosures the FRB proposes are ill-suited to GAP. The commentary accompanying the proposed rule states “Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection (“GAP”) agreements must be disclosures according to §226.4(d)(3) rather than according to §226.4(d)(2) for property insurance.” (Regulation Z; Truth in Lending, 75 Fed. Reg. 58539, 58747(2010).) Thus, the proposed model disclosures applicable to GAP are contained in H-17(A).

The first portion of the disclosure states:

OPTIONAL COSTS

Option to Purchase (Name of Product)

STOP. You do not have to buy (name of product) to get this loan. Go to (Web site of the Federal Reserve Board) to learn more about this product.

The disclosure is alarmist. By stating “STOP”, it leads the consumer to believe that s/he is looking at something harmful. It is important for the FRB to recognize that a number of states already have similar disclosure requirements for GAP that are clearer. Here are a few examples:

Colorado - The purchase of GAP is not required in order to obtain the credit or any particular or favorable credit terms. (4 COLO. CODE REGS. §902-1, Rule 8(b)(1).)

Georgia - Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease may be conditioned upon the purchase of the GAP waiver. (GA. CODE ANN. §33-63-6(8).)

Michigan - A creditor may not condition an extension of credit, the terms of that credit, or the terms of the related finance agreement on the purchase of a GAP waiver. (MICH. COMP. LAWS §492.27(h).)

Utah - None of the following may be conditioned on the purchase of a GAP waiver:
the extension of credit; a term of credit; or a term of the related vehicle sale or lease. (UTAH CODE ANN. §31A-6b-302(i)(i-iii).)

Vermont - Neither the extension of credit, the terms of the credit nor the terms of the related sale in the case of a motor vehicle or other good or service are to be conditioned upon the purchase of a debt protection agreement. (VT. STAT. ANN. tit. 8, §10405(c)(7).)

Washington - Neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the waiver. (WASH. REV. CODE §48.160.050(9).)

Accordingly, we believe the FRB should adopt language similar to the state mandated disclosures noted above.

Also, we do not believe that the FRB web site will give the consumer information about the specific GAP contract s/he is considering purchasing. Since GAP contracts vary, the information on the FRB web site may not apply to the actual product the consumer is considering. Thus, it is preferable to tell the consumer to read the contract and/or brochure for the product s/he is considering purchasing.

Do I need this product?	[These payments will only temporarily suspend your payments due and will not reduce the balance you owe. Your balance will actually increase during the suspension period as interest continues to accumulate.] If you already have enough insurance or savings to [pay off this loan][make payments on this loan] if you (covered event), you may not need this product. Other types of insurance can give you similar benefits and are often less expensive.
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As noted above, insurance is typically not available to cover the remaining loan balance when there is a total loss. Next, it is not in the best interests of a consumer to use savings to pay off a loan for a totaled car that can no longer be used and then incur the cost of a new car. Instead, it is a more prudent practice to purchase a GAP contract, which will waive the remaining balance and allow a consumer to use their savings to purchase a new car, not to pay off the remaining loan balance on a totaled vehicle.

For example, if the consumer has \$5,000 in savings, and the payoff for the loan is \$4,000, then the consumer will only have \$1,000 left for a down payment on a new car. If the consumer has GAP, the \$4,000 owed on the totaled car will be waived, and the consumer will have the entire \$5,000 for the down payment on the new car. With a higher down payment, the consumer will obtain better terms on the new loan. Thus, the FRB’s proposed disclosures to the consumer to use savings to pay off the loan could lead the consumer to make a bad financial decision.

What is the maximum benefit amount?	This product [will pay off your outstanding loan balance, which is now (<i>outstanding loan balance</i>)] [only covers the first (<i>maximum benefit amount</i>) of the outstanding balance on your loan] [will make your loan payments of up to (<i>amount</i>) for (<i>period</i>)]. [You will be responsible for any balance due above (<i>maximum benefit amount</i>).]
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We believe that this disclosure is deceptive. Typically, GAP will pay off the loan balance – but only after the vehicle insurer pays – up to a maximum amount. However, this proposed disclosure does not mention the vehicle insurer. As a result, if a consumer relies on this disclosure, s/he might erroneously believe that GAP would cover the entire amount due on the loan in the event of a total loss; and to their detriment, believe that s/he no longer needs vehicle insurance, which could have a disastrous result. Thus, we do not believe that this disclosure is appropriate for GAP.

Can I receive benefits?	<u>[You may not receive any benefits even if you buy this product.]</u> You meet the [age][employment] eligibility requirements [but there are other requirements that you must meet. If you do not meet these requirements, you will not receive any benefits even if you buy this product and pay the (period) [premium][charge]].
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It is difficult to determine how this disclosure would apply to GAP. The statement “you may not receive any benefits even if you buy this product” is disingenuous. If a consumer experiences a total loss, there is usually a difference between what the consumer owes on the loan, and what the vehicle insurer pays. If the consumer buys GAP, then it will waive this difference.

Similarly, there are no age or employment eligibility requirements for GAP. While other requirements may exist, they relate to the vehicle, not the consumer. Thus, at the time of purchase, eligibility of the vehicle for GAP is determined. If somehow a mistake is made and the vehicle does not meet the requirements, then the GAP contract is returned to the consumer, with a full refund, usually within a month of purchase. Accordingly, this disclosure is inapplicable for GAP.

Value of GAP as a Product

We are deeply concerned with statements in the commentary to the proposed rule that question the “merits of these products.” (Regulation Z; Truth in Lending, 75 Fed. Reg. 58559 (2010).) GAP is extremely valuable. For example, we analyzed the data for one of the financial institutions for whom we administer GAP contracts. We determined that over \$14 million dollars worth of debt for that financial institution’s customers have been waived due to the purchase of GAP. We believe that represents a significant amount of money – and that those consumers who opted to purchase GAP in conjunction with a car loan from that financial institution have benefitted from their purchase of GAP. We have similar numbers for all of the other financial institutions with which we work.

Testing

Lastly, we question the adequacy of the testing done by ICF Macro, on behalf of the FRB, for credit protection products if such testing is to be used to develop model disclosures for GAP. Most troubling to us is that the study did not involve any testing of GAP, yet the results of the study will be applied to GAP. We respectfully submit that the

testing conducted by ICF Macro was not conducted in such a way as to be relevant to GAP products.

In contrast, in the Card Act, passed May 22, 2009, Public Law 11-24, section 509, the Comptroller General was ordered to conduct a study as follows:

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the terms, conditions, marketing, and value to consumers of products marketed in conjunction with credit card offers, including—

- (1) debt suspension agreements;
- (2) debt cancellation agreements; and
- (3) credit insurance products.

(b) AREAS OF CONCERN.—The study conducted under this section shall evaluate—

- (1) the suitability of the offer of products described in subsection (a) for target customers;
- (2) the predatory nature of such offers; and
- (3) specifically for debt cancellation or suspension agreements and credit insurance products, loss rates compared to more traditional insurance products.

(c) REPORT TO CONGRESS.—The Comptroller shall submit a report to Congress on the results of the study required by this section not later than December 31, 2010.

We believe that the approach applicable to the Comptroller General is the correct way to address any problems or issues that the FRB may have with these products. First, the Comptroller General has a Congressional mandate for the study. Second, since the study was publicly announced, the Comptroller General has been available for all who might seek to comment. Third, once the results of the study are made public, Congress will determine what action, if any is needed. Lastly, the Comptroller General is considering the products individually.

We respectfully request that the FRB reconsider the proposed rules in light of the above and welcome any questions you may have. We are available to meet in person, should it be desired.

Very Truly Yours,



Michelle Dicks
General Counsel